

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PAUL YAHNE,

Plaintiff,

v.

DR. BALDERAMA, *et al*,

Defendants.

Case No. C04-5346KLS

ORDER

The parties have consented to have this matter be heard by the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local Magistrates Rule 13. Plaintiff has filed a civil rights complaint under 42 U.S.C. § 1983, and is proceeding *in forma pauperis*. This matter is before the court due to plaintiff's failure to respond to the court's order to respond to statements made by defendants' counsel in his declaration filed on August 15, 2005. (Dkt. #34). For the reasons set forth below, the undersigned hereby finds and ORDERS as follows:

On July 18, 2005, the court ordered defendants to file a response by no later than August 15, 2005, explaining why the court should consider their motion for summary judgment (Dkt. #32), which was filed two months after the deadline for filing dispositive motions in this case. (Dkt. #33). In addition, defendants were directed to inform the court as to the status of the joint status report that was due on June 2, 2005. (Dkt. #18). The court re-noted defendants' motion for summary judgment for consideration on September 16, 2005, pending defendants' response to the order to show cause.

1 Defendants' counsel filed a declaration in response to the court's order to show cause on August
2 15, 2005. (Dkt. #34). Defendants' counsel stated that in April or May 2005, he attempted on a number of
3 occasions to have plaintiff initiate the drafting of the joint status report, and that plaintiff assured him he
4 would do so. Defendants' counsel also stated that after having received no reply to a further inquiry he
5 made in early June 2005, he sent plaintiff a partially completed joint status report so that he would know
6 what format to use and asked him to fill in his portion of the form.

7 After still not hearing from plaintiff for some time, defendants' counsel discovered plaintiff was
8 incarcerated in Kittitas County Jail. Defendants' counsel stated that a summary judgment motion was not
9 filed prior to the deadline for doing so, because he had been attempting to work with plaintiff on case
10 preparation. Defendants' counsel requested the court entertain defendants' summary judgment motion or,
11 in the alternative, dismiss this matter for plaintiff's failure to prosecute.

12 In order to be able to adequately rule on whether to entertain defendants' summary judgment
13 motion or to dismiss this case for failure to prosecute, the undersigned ordered plaintiff to file a response
14 to the statements made by defendants' counsel in his declaration by no later than September 8, 2005.
15 Plaintiff was warned, however, that failure to so respond by that date would be deemed a failure to
16 prosecute, and the undersigned would recommend dismissal of this matter. To date, plaintiff has not
17 responded to the court's order. Because plaintiff has failed to respond to the court's order, his complaint
18 is hereby DISMISSED for failure to prosecute.

19 The Clerk is directed to send copies of this Order to plaintiff and to counsel for defendants.

20 DATED this 26th day of October, 2005.

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24 Karen L. Strombom
25 United States Magistrate Judge
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